

STATE OF MICHIGAN  
COURT OF APPEALS

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CHARTER TOWNSHIP OF WEST  
BLOOMFIELD,

UNPUBLISHED  
July 19, 2007

Plaintiff-Appellant,

v

GEORGE VIDU, COMERICA BANK, and  
BANK ONE, N.A.

No. 269451  
Oakland Circuit Court  
LC No. 2004-060728-CC

Defendants-Appellees.

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Before: Meter, P.J., and Talbot and Owens, JJ.

PER CURIAM.

In this condemnation action, plaintiff Charter Township of West Bloomfield appeals as of right from the final judgment of the Oakland Circuit Court, which found that the value of an easement over defendant George Vidu's<sup>1</sup> property was \$11.12 a square foot, for a total value of \$35,453.34. We affirm.

Plaintiff condemned an easement over a strip of land along the western edge of defendant's property in order to construct a recreational bicycle path. The parties dispute the value of the condemned property and, hence, the amount of compensation that defendant should receive for this taking.

First, plaintiff argues that defense counsel improperly questioned its expert appraiser, Michael Hughson, concerning the square-foot values of comparable properties that he used to appraise defendant's property, and improperly referred to those values during closing argument. However, although defense counsel elicited testimony concerning the square-foot values of these comparable properties and discussed those values in his closing argument, the trial court explicitly declined to use the square-foot values of the comparable properties to calculate the value of defendant's property. Instead, the trial court relied on the square-foot values of two

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<sup>1</sup> Defendants Comerica Bank and Bank One apparently have security interests in the property, and did not actively participate in this case. For purposes of this opinion, the term "defendant" shall refer only to Vidu.

properties that were immediately north of defendant's property, and over which the same bicycle path ran, to calculate the value of the easement. Because the trial court did not rely on the square-foot values of the comparables, any potential error committed in pursuing this line of inquiry was harmless and is not grounds for reversal. MCR 2.613(A); MRE 103(a).

Next, plaintiff argues that the trial court's determination of the value of the easement is not within the range of evidence presented at trial and is otherwise not supported by the evidence. We disagree.

The determination of the value of property taken by the government is a question of fact. *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 137; 680 NW2d 485 (2004). In the context of condemnation cases, this Court has stated, "It is not within the province of this Court to review questions of fact other than to ascertain the presence of evidence that can support the verdict." *Id.*, quoting *Detroit Bd of Ed v Clarke*, 89 Mich App 504, 510; 280 NW2d 574 (1979). This Court may not disturb a verdict that lies within the fair range of the testimony. *Merkur Steel Supply, Inc, supra* at 137-138.

"The goal of just compensation is to require the condemning agency to pay the approximate price that a willing buyer would have offered for the property at the time of the taking," and thereby, to place the property owner in as good a position as he would have been in had his property not been taken. *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 268; 730 NW2d 523 (2006). "[T]he proper amount of compensation for property takes into account all factors relevant to market value." *Silver Creek Drain Dist v Extrusions Div, Inc*, 468 Mich 367, 379; 663 NW2d 436 (2003).

In this case, Hughson testified that the easement was worth \$24,100. On cross-examination, however, Hughson also testified that he appraised the bicycle path easement burdening two lots adjacent to defendant's property, and that he valued one lot at \$9.33 a square foot and the other at \$12.91 a square foot. Although plaintiff may disagree with the applicability of this testimony to defendant's property, Hughson's testimony was *evidence* that the trial court properly could consider when determining the value of the easement over defendant's property.

At trial, Hughson opined that, because defendant's parcel was much larger, he believed that it would command a lower square-foot value than his neighbors' properties. However, the trial court was not obligated to agree with, and accept, Hughson's opinion. Rather, a court's duty in a condemnation case is to arrive at a figure, based on the evidence presented at trial, which fairly compensates a defendant for the taking. An award of just compensation "'is not a matter of formulas or artificial rules, but of sound judgment and discretion based upon a consideration of all the relevant facts in a particular case.'" *Silver Creek Drain Dist, supra* at 378, quoting *In re Widening of Gratiot Avenue*, 294 Mich 569, 574-575; 293 NW 755 (1940).

Hughson agreed that sales of adjacent properties, if any had been available, would have been ideal comparables to use in determining the value of defendant's easement. The trial court's decision to average the square-foot values (determined by Hughson) of the two neighboring properties and use that figure to calculate the value of defendant's property (in accordance with plaintiff's formula) is based on record evidence. Therefore, the \$11.12 square-foot value of the easement, as calculated by the trial court, is within the fair range of evidence presented at trial and is not clearly erroneous.

Affirmed.

/s/ Patrick M. Meter

/s/ Michael J. Talbot

/s/ Donald S. Owens